IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY NINETH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE GHULAM MOHAMMED

WRIT PETITION NO : 26571 of 2003

Between:

1 K.Masthan Reddy, S/o.Aadisesha Reddy, R/o.Penuballi Village, Butchimandalam
nellore District.
2 Palagati Surendra Reddy, S/o.Jayarami reddy Santhinagar, 3rd line, Kovvur, Nellore district
3 Kalahasti Venkata Subramanya Madhavan S/o.Sitarama Sastry, Nagamamba Puram
Buchireddy palem Mandalam, Nellore District
4 Annam, Kotaiah Swamy s/o.Nageswara Rao Aravapalem, sangam Mandalam, Nellore District
5 Rebala Sulochana, W/o.venkata Ramana Reddy balajinagar, Nellore

..... PETITIONER(S)

AND

1 Government of Andhra Pradesh, Public Enterprises Department Implementation Secretariat,
Secretariat, Hyderabad rep.by its Prl.Secretary/chairman
2 Government of Andhra Pradesh, Industries&Commerce Department, Secretariat, Hyderabad, rep.by its Principal
Secretary.
3 Government of Andhra prades, Agriculture & Cooperative Department, Secretariat, Hyderabad, rep.by its Principal
Secretary.
4 Commissioner for Cooperative and Registrar of Cooperative Societies, Andhra Pradesh, Gruhakalpa, Nampally, Hyderabad.
5 Commissioner & Director of Sugar and Cane Commissioner/ Registrar of Co-operative Societies, Chirag Ali Lane,
Hyderabad.
6 The Kovvur Cooperative Sugar factory Ltd., R.No.40, Pothi Reddypalem Post,

Kovvur Mandal, Nellore District Kovvur
rep.by its Managing Director
7 M/s.Krebs Biochemicals Ltd., Having its Regd.Office at 401& 402, Cyber Heights 4th floor, Plot No.13, Road No.2 Banajara
Hills, Hyderabad, rep.by its Managing Director.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, or order or direction more particularly in the nature of writ of Mandamus declaring (i) the Section 12-A of A.P.Cooperative Societies Act 7 of 1964 as substituted by A.P.Ordinance No.4 of 2003 published in A.P.Gazette as No.16 dated 2.8.2003 as patently arbitrary, illegal, without application of mind contrary to the very scheme and objectives of the said act, besides hitting Article 14 of Constitution of India and consequently strike down the same. (ii) the action of the 5th respondent i.e.Registrar of Cooperative Societies/Commissioner & Director of Sugars and Cane Commissioner, A.P.,Hyderabad, in putting or sale of the assets of the Kovvur Cooperative Sugar Factory Ltd., NR.No.40 i.e. the 6th respondent herein and fixing the date of closure for receipt of bids on 22-10-2003 as per cryptic paper publication on 13.10.03 in Eenadu Daily news paper as without jurisdiction and considering the bid of R7 at lower offer then the earlier bids is illegal, arbitrary, without power of authority, weight of evidence and probabilities of the case without application of independent mind besides being violative of section 3, section 12-A, Section 64 to 69-A, Section 129, Section 130 & Section 133 among others of the A.P Cooperative Societies Act 7 of 1964, and hence liable to be set aside and consequently continue the 6th respondent factory under cooperative sector.

For the Petitioner: MR.K.S.MURTHY, Advocate

For the Respondent.: Advocate General for Respondents 1 to 5

For the respondent No.7: Mr.S.Niranjan Reddy for R.7, Advocate

The Court Made the Following Order: (Per Sri BRSR.J)

The subject matter that arises for consideration in this writ petition is not res integra but squarely covered by a decision rendered by a Division Bench of this Court to which one of us viz., BRSR,J is a member. In W.P.Nos.20572 of 2003 and batch dated 30.4.2004 this Court after an elaborate consideration of the matter allowed the writ petitions filed by the petitioners therein in the following manner.

a. “uphold the constitutional validity of Section 12-A(1)(2) and (9) to (13) and explanations, except explanation (h), which defines the ‘best offer’.

b. Strike down explanation (h), which defines ‘best offer’ as unconstitutional being violative of Article 14 of the Constitution of India;

c. Do not find any constitutional infirmity in sub-sections (3) to (8) of Section 12-A of the Act, but the concept of 'best offer' as defined in explanation (h) runs through the said provisions and or so inextricably bound up those forming an integral part of the said sub-sections and, therefore, we find it difficult to apply the 'doctrine of severability' and save them. Therefore, sub-sections (3) to (8) are also struck down as unconstitutional being violative of Article 14 of the Constitution of India;

d. Uphold the decision of the Registrar taken under Section 12-A(1) of the Act alone; and

e. Other consequential decisions are declared void in view of striking down of explanation 'h' and as well as sub-sections (3) to (8) of Section 12-A of the Act."

Following the said judgment, this writ petition is also partly allowed to the extent indicated above. The parties are directed to bear their own costs.

(B.SUDERSHAN REDDY,J)

Dt.29..06..2004

(GHULAM MOHAMMED,J)

msv.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this

the 29th day of June Two Thousand and four.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 Prl.Secretary/chairman
Government of Andhra Pradesh, Public Enterprises Department Implementation Secretariat,
Secretariat, Hyderabad.

2 Principal Secretary, Government of Andhra Pradesh, Industries &Commerce Department, Secretariat, Hyderabad,
3 Principal Secretary,
Government of Andhra pradesh, Agriculture & Cooperative Department,
Secretariat, Hyderabad.

4 Commissioner for Cooperative and Registrar of Cooperative Societies, Andhra Pradesh, Gruhakalpa, Nampally, Hyderabad.
5 Commissioner & Director of Sugar and Cane Commissioner/ Registrar of Co-operative Societies, Chirag Ali Lane,
Hyderabad.

6.2CCs to Advocate General, High Court of A.P. Hyderabad

7.2CD copies